United Nations A/HRC/31/NGO/73

General Assembly

Distr.: General
19 February 2016

English only

Human Rights Council
Thirty-first session
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by the International Movement Against All Forms of Discrimination and Racism (IMADR), non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-02537(E)

Please recycle

Freedom of assembly in Sri Lanka: limitations through use of force and intimidation (January 2015-Present)[1]

The establishment of a new Sri Lankan Government in January 2015 was accompanied by a commitment to promote and implement human rights obligations with respect to freedom of assembly. Recent events, however, indicate that the government has failed to fulfil its promises.

Under President Sirisena's rule interferences with the right to freedom of assembly have included the violent dispersal of protests and demonstrations by the police, and the employment of intimidatory practices. Furthermore, the police's increasing tendency to ban or restrict demonstrations through the use of Court enjoining orders suggests an attempt to legitimise systematic interferences with this fundamental right. This conclusion is strengthened by the Deputy Minister of Justice's recent legislative proposal to introduce limitations on the geographical scope of protests, contrary to the prohibition of generalised restrictions on freedom of assembly established under international human rights law. The above trends are particularly widespread in the Northern and Eastern provinces, where they serve to suppress Tamil political participation.

The practices adopted by the Government, in conjunction with a lack of accountability for past violations, contribute to the continued existence of a climate of intimidation and fear, which, in turn, has a chilling effect on the full enjoyment of freedom of assembly.

Violent tactics in the suppression of public protests

The practices employed to restrict protests raise serious concern. Incidents involving the deployment of tear-gas and water cannons against protesters have been repeatedly reported during the past year,[2] and students have increasingly been the targets of police brutality. For example, on 29 October 2015, the anti-riot squad suppressed a demonstration in Colombo by employing water cannons, tear-gas and batons against University students. This incident resulted in thirty-nine arrests and nine people were hospitalized.[3] The Police Media Unit has not acknowledged the use of the abovementioned methods and has denied the deployment of Anti-Riot Police personnel.[4]

Recently, the UN Special Rapporteur on the right to freedom of peaceful assembly and association warned against the employment of water cannons in demonstrations, as they "can inflict great bodily harm".[5] Similarly, it has been noted that the use of tear-gas "does not discriminate between demonstrators and non-demonstrators, healthy people and people with health conditions",[6] and is potentially hazardous.

Following the incident, an investigation conducted by the Human Rights Commission of Sri Lanka (HRCSL) led to the conclusion that the assault had been in breach of students' rights under sections 11 and 12 (1) of the Constitution,[7] as it involved a disproportionate use of force by police.[8] The HRCSL requested that the officers concerned be identified,

[1] The Human Rights Centre Clinic at the University of Essex undertook research and analysis in preparation of this submission. The Sri Lanka Campaign for Peace and Justice assisted with the editorial process. The International Movement Against All Forms of Discrimination and Racism (IMADR) has made the submission.

[2] INFORM Report: Repression of Dissent in Sri Lanka, 9 January – 19 April 2015 (INFORM April) and INFORM Report: Repression of Dissent in Sri Lanka, 20 April – 31 May 2015 (INFORM May), p. 7-8.

[3] http://www.asianmirror.lk/news/item/12549-thirty-nine-students-arrested-at-hnda-protest; (last accessed 01/02/2016)

[4] https://www.ceylontoday.lk/16-108387-news-detail-no-batons-no-tear-gas-no-riot-police-police-say.html; (last accessed 01/02/2016)

[5] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16998&LangID=E#sthash.EKLYI348.dpuf (last accessed 01/02/2016).

[6] UN Human Rights Council (HRC), "Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association" 21 May 2012, A/HRC/20/27 (A/HRC/20/27), para. 35.

[7] The Constitution of Sri Lanka, Section 11: No person shall be subjected to torture or to cruel, inhuman or degrading treatment [...]; Section 12. (1): All persons are equal before the law and are entitled to the equal protection [...].

[8] http://hrcsl.lk/english/2015/12/04/hrcsl-report-on-police-assaults-on-hnda-students/ (last accessed 01/02/2016).

held accountable, and subjected to disciplinary proceedings. On 7 January 2016, however, the police challenged the above recommendation before the Court of Appeal.[9]

Importantly, the Commission highlighted the systematic character of the abuses, emphasising that the events formed part of the "broader issue concerning the manner in which the [...] Security Forces control civil demonstrations and the impact on the freedom of [...] peaceful assembly guaranteed by the Constitution [...] and Sri Lanka's international obligations". The forceful dispersal of protests, along with the continuing culture of police impunity, dramatically discourages involvement in the political process and prevents the opening of the public space.

Intimidation and climate of fear

Adding to the chilling effect caused by the dispersal of protests, is the use of intimidatory tactics by security forces, particularly in Tamil-majority areas. Events surrounding Remembrance week in May 2015 illustrate this issue.[10]

In the North and East, intelligence officers harassed Tamils in their homes and threatened those travelling to events to discourage participation. Intelligence officers also attended many remembrance ceremonies.[11] Due to the latter's role in the abuses perpetrated both during and since the conflict, their attendance alone induces fear. Surveillance - through filming, questioning and recording of participants' details - aggravates the sense of intimidation.[12] The summoning of community leaders and event organisers has been among the intimidatory techniques employed.[13] The above tactics appear to be typical of the response to protests more broadly,[14] as demonstrated by the Government reaction to the campaign demanding the release of Tamils detained under the Prevention of Terrorism Act.[15]

It is acknowledged that the use of disproportionate surveillance measures against protestors who do not pose a security threat "has the potential to deter people from taking part in peaceful protest".[16] This conflicts with the State's positive obligation to facilitate the exercise of the right to freedom of assembly.[17]

Court enjoining orders have also been used to ban events. In May, the Mullaitivu Magistrate Court issued a 14-day ban, ostensibly to prevent a 'breach of peace'.[18] However, permissible limitations of freedom of assembly under the ICCPR, to which Sri Lanka is a party, are built on the exceptional nature of derogations,[19] and on the assumption that restrictions shall be "proportionate to the aim pursued".[20]

Blanket bans, like the above, "tend to be over-inclusive and [...] fail the proportionality test".[21] This conclusion is also relevant to the proposed legislation amendment limiting protests' geographical scope, as mentioned above. Moreover, the frequency of bans and restrictions issued suggests a normalisation of the State's interference with citizens' rights.

The limitations on freedom of assembly contained in the Sri Lankan Constitution raise further concerns. Under Article 14(1)(b) of the Constitution, the "exercise and operation" of the right to freedom of assembly can be restricted "in the interests of racial and religious harmony".[22] This provision exceeds the scope of the permitted restrictions on freedom

[9] http://www.colombopage.com/archive_16A/Jan07_1452141421CH.php (last accessed 01/02/2016).
[10] INFORM May, p.10-11.
[11] INFORM May, p.10-11; http://www.tamilguardian.com/article.asp?articleid=14715 (last accessed 01/02/2016).
[12] http://www.tamilguardian.com/article.asp?articleid=14805 (last accessed 01/02/2016); INFORM May, p.10.
[13] INFORM Report: Repression of Dissent in Sri Lanka, July – September 2015 (INFORM September), p.5.
[14] INFORM Report: Repression of Dissent in Sri Lanka, 1 June – 30 June 2015 (INFORM June), p.5-6.
[15] https://www.wsws.org/en/articles/2015/11/18/pris-n18.html (last accessed 01/02/2016)
[16] Equality and Human Rights Commission, *Human Rights Review 2012*, p.380.
[17] A/HRC/20/27, para.27.
[18] http://tamilguardian.com/article.asp?articleid=14768 (last accessed 01/02/2016); INFORM May, p. 9-11.
[19] A/HRC/20/27, para. 16.
[20] *Ibid.*, para. 40.
[21] Belyaeva, Nina, et al. "OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly", OSCE/ODIHR Panel of Experts on the Freedom of Assembly, second ed., Warsaw/Strasbourg 2010, p.16.
[22] *Ibid.* Art.15(3).

of assembly under the ICCPR.[23] Moreover, as highlighted by OSCE Guidelines, international and regional human rights instruments provide an exhaustive list of grounds for restrictions, which should "not be supplemented by additional grounds in domestic legislation".[24]

Targeting Tamil-majority areas

The Tamil-majority North and East regions are particularly affected by the measures highlighted above, and threats and surveillance frequently target Tamil remembrance events. This is exemplified by the overwhelming concentration of intelligence officers at events held in these regions, whereas they are virtually absent from protests in the South. The failure by the government to return Tamil lands to their original owners and the continuing military occupation are another source of tension exclusively affecting this area.[25]

These trends expose the "Sinhalisation" process still conducted at the hands of the government, which ultimately prevents Tamil communities from resuming an ordinary life after the conflict and participating fully in the political process.[26] The continuing climate of fear and insecurity exacerbates the negative effects and limitations on freedoms in the North and East, thereby creating a chilling effect amongst the Tamil population.

Recommendations

Despite some minor improvements recorded since the change in government, Sri Lanka still faces significant challenges. Limitations on the right to freedom of assembly highlight a systemic issue within the country and are detrimental to the process of transitional justice. With this in mind, the Government of Sri Lanka is urged to:

- Enact comprehensive security sector reforms that fully embrace human rights and ensure accountability and the rule of law;
- Align restrictions on freedom of assembly under the Constitution with international standards, and refrain from introducing blanket restrictions on protests;
- Terminate all forms of unwarranted interference in Tamil commemorative events and military presence in the North and East;
- Respond to the pending request of the Special Rapporteur on the right to freedom of peaceful assembly and association for a country visit.

The Sri Lanka Campaign for Peace and Justice, an NGO without consultative status, also shares the views expressed in this statement.

---

[23] As noted in a Human Rights Watch report addressing freedom of expression in Sri Lanka: "restrictions 'in the interests of' are not permissible"; HRW, Human Rights Accountability in Sri Lanka, 1992, p.39.
[24] Belyaeva, Nina, *et al*. "OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly", cit. *supra*, p.17.
[25] INFORM June, p.5; INFORM May, p.6.
[26] http://www.theguardian.com/global-development/2015/may/28/sri-lanka-army-land-grabs-tamil-displacement-report-oakland-institute (last accessed 01/02/2016).